IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION (Lodg.) NO.3270 OF 2004

Dattaram Panchal & Ors. ..Petitioners.

Vs.

M/s. Nirlon Limited & Ors. ..Respondents.

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Mr. M.D. Nagle for the Petitioners.

Mr. Milan Bhise for Respondent Nos.1 and 2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

25th January, 2005.

ORAL JUDGMENT :

1. The First Respondent has been engaged in the business of manufacturing and selling yarn and other products. The Petitioners filed a complaint in the Labour Court at Mumbai complaining that the First Respondent committed unfair labour practices under Items 1 (a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. According to them, the Petitioners had served the company in excess of 240 days in each calender year

during the course of their employment. Though the workmen had been designated as trainees, the duties which were performed by them were stated to be regular and perennial in nature. There was according to them absolutely no difference in the duties performed by them and the other workmen who had been designated as permanent workmen of the company. On 22nd November, 1999 the services of the Petitioners were dispensed with allegedly without following due process of law and without the payment of any retrenchment compensation. In these circumstances, it was alleged that the action of the management constituted an unfair labour practice under the provisions of Schedule IV of the Act.

2. The complaint was initially filed by 21 workmen. Of these complainants 16 have since entered into a settlement in May 2000. On 11th January, 2003, the management filed an application calling into question the maintainability of the complaint on the ground that there was no relationship of an employer and employee with the Petitioners. The aforesaid application was rejected by the Labour Court by its order dated

12th January, 2004. Before the Labour Court reliance was sought to be placed on the judgments of the Supreme Court in Cipla Ltd. v. Maharashtra General Kamgar Union (2001 I CLR 754) and Sarva Shramik Sangh v. M/s. Indian Smelting & Refining Co. Ltd. (2003 III CLR 949 (SC). The Supreme Court had in these cases held that unless the relationship of an employer and employee is undisputed or indisputable, the jurisdiction of the Labour or Industrial Court under the provisions of the Act to entertain a complaint would not stand attracted. The Labour Court held that Cipla dealt with a case where the complainant workmen were engaged by a contractor. The workmen had sought to repudiate the relationship with the contractor and to seek a direct employer employee relationship with the principal employer. It was in these facts that it was held that this could not form the subject matter of a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, since the repudiation of a contract with one employer and the establishment of a contract with another employer could only be the result of an adjudication by the competent forum under the Industrial Disputes Act,

1947. On the other hand, in the present case there is no dispute about the fact that the complainant workmen were engaged directly by the Respondent company as trainees. The Labour Court held that the question as to whether the complainants were workmen within the meaning of the Industrial Disputes Act, 1947 and consequently governed by the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was a separate matter and that could be decided by the Court. The Court noted that the complainants had filed a number of documents regarding their leave, salary etc. which was all sanctioned or paid by the Respondents. In the circumstances, the application was rejected.

3. The company carried the matter in revision and the application came to be allowed by the Industrial Court. The Industrial Court held that the appointment letters clearly referred the workmen as trainees and though there was no third party like a contractor between the workmen and the company, the fact remains that the company had come with a case that the workmen are the trainees. This issue the Industrial Court held could not be

decided by the Labour Court. Reliance was sought to be placed by the workmen on the judgment of the Supreme Court in M/s. Trimbak Rubber Industries Ltd. v. Nasik Workers Union (JT 2003 (5) SC 602). That was distinguished on the ground that in the case before the Supreme Court it emerged that all the workmen engaged by the management were trainees.

4. Counsel appearing on behalf of the Petitioners has sought to question the correctness of the view of the Industrial Court. On behalf of the Petitioners it was urged that this is not a case where the workmen were employees of a third party contractor nor a case wherein the relationship of contract employment was sought to be repudiated. There is admittedly a direct engagement of the Petitioners by the Respondent management. Hence, the jurisdiction of the Industrial Court would not stand ousted.

5. In dealing with the submissions, at the outset, it would be necessary to refer to the provisions of Section 28 of the Act under which a complaint of unfair labour practice can inter alia be filed by a

union or any employee where any person has engaged in or is engaging in any unfair labour practice. The expression 'employee' is defined in Section 3(5) of the Act inter alia to mean in the case of an industry to which the Bombay Industrial Relations Act, 1946 applies, an employee as defined in Section 3(13) of the Act and, in any other case, a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 and a sales promotion employee as defined in clause (d) of Section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976. Section 2(s) of the Industrial Disputes Act defines a workman to mean any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. The rest of the definition is not material for the present purposes. An apprentice is therefore clearly within the definition of 'workman' under Section 2(s). In the present case, the engagement of the workmen by the Respondent is not in dispute. The decision of the Supreme Court in Sarva Shramik Sangh v. M/s. Indian Smelting & Refining Co. Ltd. (2003 III CLR 949) holds that a pre-existing relationship of an employer and

employee is a must and an essential prerequisite to invoke the jurisdiction under the provisions of the Act. A person who does not answer the description has no locus to file a complaint. The existence of an employer-employee relationship is a jurisdictional fact. In order to entertain a complaint under the Act it has to be established that the claimant was an employee of the employer against whom the complaint is made. When there is no dispute about such relationship, the Act would have full application. When that basic claim is disputed, obviously the issue has to be adjudicated upon by the competent forum. The Supreme Court held that once the existence of the contractor is accepted, it leads to an inevitable conclusion that a relationship exists between the contractor and the complainant workmen. Where the workmen contend that the contractual arrangement is a facade and sham arrangement, the dispute would need to be adjudicated upon by the competent forum under the Industrial Disputes Act, 1947.

6. In the present case, there is absolutely no intervention of any third party such as a contractor. The workmen did not seek to repudiate

their relationship since the relationship that exists is with the First Respondent and the First Respondent alone. In these circumstances, the reasons on the basis of which the Industrial Court in its revisional jurisdiction held that the complaint was not maintainable are fallacious and call for interference in the exercise of jurisdiction under Article 226.

7. The Petition is accordingly allowed. The order of the Industrial Court dated 16th October, 2004 is quashed and set aside. Complaint (ULP) 44 of 2000 filed by the Petitioners shall accordingly stand restored to the file of the Labour Court. Having regard to the facts and circumstances of the case, the Labour Court is directed to set down a time schedule for the early disposal of the complaint so that the complaint can be disposed of expeditiously and in any event on or before 30th April, 2005. The parties are directed to appear before the Labour Court on 7th February, 2005 for directions so that a time schedule for the disposal of the complaint can thereupon be fixed. The Petition shall stand disposed of in the aforesaid terms.

8. The Petitioners shall be entitled to the costs of this Petition quantified at Rs.5,000/-.